

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

FILED

JAMES E. MCROY

V.

MICHAEL F. SHEAHAN, ET AL.

JUN 16 2008

6-16-2008 MD

CASE NO. 08C2741

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

JUDGE CASTILLO

REQUEST FOR

RECONSIDERATION TO RESPONSE TO THE COURT'S  
ORDER DIRECTING PLAINTIFF TO SHOW CAUSE

NOW COMES PLAINTIFF, JAMES E. MCROY, PRO SE, MOVES  
THIS HONORABLE COURT FOR PLAINTIFF TO SHOW CAUSE. IN SUPPORT  
THEREOF PLAINTIFF STATES THE FOLLOWING:

1. ON JUNE 10, 2008, PLAINTIFF RECEIVED ORDER DATED  
JUNE 4, 2008, DISMISSING ACTION PURSUANT TO 28 U.S.C. SECTION  
1915A(b)(1) FOR FAILURE TO STATE A CLAIM.
2. UNDER ILLINOIS LAW, RELATION BACK IS ALLOWED WHEN  
THE ORIGINAL COMPLAINT WAS TIMELY FILED AND AMENDED COMPLAINT  
"GREW OUT" OF THE SAME TRANSACTION OR 'OCCURRENCE' SET FORTH  
IN THE ORIGINAL COMPLAINT. 725 ILCS 5/2-616(b).
3. UNDER FED. R. CIV. P. EITHER RULE 15(c)(1)(A) OR RULE 15  
(c)(1)(B), PLAINTIFF'S CURRENT COMPLAINT MUST "ARISE OUT" OF THE  
SAME TRANSACTION OR 'OCCURRENCE' SET FORTH IN THE ORIGINAL  
MCROY I COMPLAINT. (SEE ORDER DATED JUNE 4, 2008).
4. PLAINTIFF'S CLAIM "AROSE OUT OF THE 'CONDUCT', TRANS-

ACTION OR 'OCCURRENCE' SET OUT AND PLAINTIFF ATTEMPTED TO SET IT OUT IN THE ORIGINAL PLEADING..." FED. R. CIV. P. 15(C) (1)(A); HENDERSON V. BOLANDA, 253 F.3d 928, 932 (7TH CIR. 2001), AND THE COURT HIGHLIGHTED THAT PLAINTIFF HAD ALLEGATIONS IN GRIEVANCES FILED JUNE 7 AND JUNE 8, 2004. (SEE ORDER DATED JUNE 4, 2008), RELATING TO INMATES BEING FORCED OUT OF CELLS.

5. HOWEVER, THE PLAINTIFF DID NOT KNOW OF THE ATTACK ON JUNE 30, 2004, AS COURT STATED IN ORDER DATED JUNE 4, 2008, BUT PLAINTIFF FEARED FOR SUCH OCCURRENCE WHEN ORIGINAL PLEADING WAS FILED ON JUNE 6, 2006.

6. IN PLAINTIFF'S ORIGINAL PLEADING, HE COMPLAINED ABOUT NOT BEING ABLE TO STAY IN CELL (IN GENERAL), BUT PLAINTIFF'S EXHIBITS (M)(N) GAVE A MORE DETAILS (I.E. ABOUT SOMEONE GETTING HURT, AND SAFTY).

7. HOWEVER, PLAINTIFF'S ORIGINAL GRIEVANCES IN MCROY I COMPLAINT SHOWS THE INCLUSION LEADING UP TO THE ATTACK (I.E. ABOUT SOMEONE GETTING HURT, AND SAFTY). FURTHER, PLAINTIFF ORIGINAL PLEADING HIGHLIGHTED DEFENDANTS MICHAEL SHEAHAN AND JOHN DOE SUPERINTENDENT (I.E. SUPERINTENDENT PLAXICO), AS DEFENDANTS, NOT AS COURT STATED IN ORDER. (SEE BOTH MCROY I COMPLAINT, EXHIBITS (M)(N)<sup>(O)</sup>, AND ORDER DATED JUNE 4, 2008).

8. UNDER FED. R. CIV. P. 15(A)(B)(C)(D), PLAINTIFF MAY AMEND PLEADING AT ANY TIME BEFORE PLEADING IS SERVED; THE AMENDMENTS IS TO CONFORM TO THE "EVIDENCE" AS EXPRESS OR IMPLIED CONSENT AND "SHALL BE TREATED AS IF THEY HAD BEEN RAISED IN THE PLEADINGS AT ANY TIME", EVEN AFTER 'JUDGMENT';

THE CURRENT COMPLAINT MUST "ARISE OUT" OF THE SAME TRANSACTION OR 'OCCURRENCE' SET FORTH IN THE ORIGINAL COMPLAINT; AND IF THE PLAINTIFF HAS SUPPLEMENTAL PLEADINGS, THEY MUST SET FORTH TRANSACTIONS OR 'OCCURRENCES' OR EVENTS WHICH HAVE HAPPENED SINCE THE DATE PLEADING OR IF PLEADING IS DEFECTIVE IN IT'S STATEMENT OF A CLAIM FOR RELIEF THE COURT MAY GRANT PLEADINGS.

9. PLAINTIFF'S CURRENT COMPLAINT IS BASED UP ON BEING FORCED OUT OF CELL AND THE PROCEEDING ATTACK ARISED OUT OF THAT OCCURRENCE AS SET FORTH IN PLAINTIFF'S ORIGINAL COMPLAINT IN MCROY 1, AND EVIDENCE. (SEE EXHIBITS (M), (N), <sup>(O)</sup> OF MCROY 1).

10. UNDER FED. R. CIV. P. 8, PLAINTIFF IS REQUIRED ONLY THAT HE PROVIDE SHORT PLAIN STATEMENTS OF HIS CLAIM, AND A PLAINTIFF NEED ONLY ALLEGE A VALID CLAIM AND PROVIDE SOME INDICATION OF TIME AND PLACE..." THE PLEADING IS NOT MADE INSUFFICIENT BY THE INSUFFICIENCY OF ONE OR MORE ALTERNATIVE STATEMENTS.

WHEREFORE, PLAINTIFF JAMES E. MCROY, PRAYS THIS HONORABLE COURT RECONSIDERS IT'S DISMISSAL OF PLAINTIFF'S RESPONSE TO ORDER DIRECTING PLAINTIFF TO SHOW CAUSE, AND ISSUE A MANDATE REINSTATING PLAINTIFF'S CLAIM, AND NOT CHARGE HIM WITH A STRIKE, UNDER PROVISION OF THE PLRA OR 28 U.S.C. SECTION 1915 (G).

RESPECTFULLY SUBMITTED,  
JAMES E. MCROY  
PRO SE

AFFIDAVIT

I, JAMES E. MCROY, SWER UNDER PENALTY OF PERJURY THAT  
THE FACTS STATED ABOVE ARE TRUE AND CORRECT TO THE BEST OF  
MY KNOWLEDGE AND BELIEF.

James E. McRoy

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EXECUTED ON JUNE 11, 2008.